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17 UNITED STATES OF AMERICA

18 UNITED STATES DISTRICT COURT

19 FOR THE CENTRAL DISTRICT OF CALIFORNIA

20 UNITED STATES OF AMERICA,

21 No. ED CR 18-231-JGB

22 Plaintiff,

23 GOVERNMENT'S EX PARTE APPLICATION  
24 FOR PROTECTIVE ORDER REGARDING  
25 PRIVACY OF VICTIM AND WITNESS  
26 INFORMATION

27 JOHN JACOB OLIVAS,

28 Defendant.

29 Plaintiff United States of America, by and through its counsel  
30 of record, the United States Attorney for the Central District of  
31 California and Assistant United States Attorneys Julius J. Nam and  
32 Eli A. Alcaraz, hereby applies ex parte for an order limiting use and  
33 wider disclosure of the discovery ("Protective Order") in this case.  
34 Counsel for defendant John Jacob Olivas ("defendant") has stated that  
35 she opposes the issuance of the requested Protective Order and  
36 intends to file an opposition. The government nonetheless requests  
37 that the Court issue the concurrently filed proposed Protective Order  
38 and as follows:

1       1. On August 1, 2018, defendant was charged in a three-count  
2 indictment with violations of 18 U.S.C. § 242 (Deprivation of Rights  
3 Under Color of Law).

4       2. On August 28, 2018 and November 26, 2018, the government  
5 made two productions of the discovery (Bates 00001 through 30081),  
6 pursuant to Rule 16 of the Federal Rules of Criminal Procedure  
7 (although some of the material may exceed the scope of the  
8 government's discovery obligations). The discovery produced thus far  
9 includes (a) law enforcement investigative reports, (b) defendant's  
10 criminal history, (c) extraction reports of cellular telephones used  
11 by various victims as well as defendant, (d) emails, (e) text  
12 messages, (f) photographs, (g) video recordings, (h) audio  
13 recordings, (i) transcripts of video and audio recordings, and  
14 (j) cellular telephone subscriber information and call detail  
15 records. In particular, the discovery includes approximately 180  
16 video recordings and 2,020 audio recordings. The government intends  
17 to continue to disclose any additional discoverable information that  
18 comes into the government's possession.

19       3. The discovery contains a substantial amount of personally  
20 identifiable information ("PII") of victims, witnesses, and other  
21 individuals unrelated to this case, including personal names, social  
22 security numbers, dates of birth, home addresses, and telephone  
23 numbers. In addition, the discovery includes private and sensitive  
24 information pertaining to victims such as photographs and video  
25 recordings of explicit sexual acts - some of which were made without  
26 consent by the victim involved and later transmitted by defendant to  
27 the victim in an apparent attempt to blackmail the victim into  
28 silence and to humiliate the victim.

1       4. The government did not initially seek a protective order in  
2 this case because the bulk of the materials portraying sexual  
3 activities appeared to involve consensual conduct between defendant  
4 and the victims and the PII appeared to belong to defendant and the  
5 victims with whom defendant was either married or in serious romantic  
6 relationships. In the government's initial assessment, defendant was  
7 presumed to be already in possession of the PII and the sexual  
8 materials prior to the government's production of the discovery,  
9 thereby appearing to obviate the need for a protective order.

10      5. After recently conducting a renewed assessment of the  
11 discovery, however, the government concluded that a protective order  
12 should be entered in this case to safeguard the PII of individuals  
13 unrelated to this case as well as the victims and to protect the  
14 privacy interests of the victims.

15      6. The government requests that the Court issue the Protective  
16 Order regarding all materials that the government has produced, and  
17 will produce, in this case to be used solely by defendant and the  
18 "Defense Team," as defined below, as part of defendant's preparation  
19 for the trial, any sentencing, and any appeal in this case. The  
20 purpose of the Protective Order is to prevent all inadvertent and  
21 unauthorized dissemination, distribution, and uses of materials  
22 containing PII and other private and sensitive information of the  
23 victims and other individuals.

24      7. If the government were to redact all PII and other private  
25 and sensitive information in this case in strict compliance with  
26 Federal Rule of Criminal Procedure 49.1, the Central District of  
27 California's Local Rules regarding redaction, and the Privacy Policy  
28 of the United States Judicial Conference, the defense would receive a

1 set of discovery that would be highly confusing and difficult to  
2 understand. Also, the government may not be able to produce some  
3 discovery, including video recordings of explicit sexual acts,  
4 because redaction of such materials is not practicable.

5 8. Wherefore, in order to permit the government to continue to  
6 provide discovery material to defense counsel while avoiding  
7 inadvertent or unauthorized dissemination of PII of victims and other  
8 individuals and victims' private and sensitive materials (especially  
9 photographs, video recordings, and audio recordings depicting any  
10 victims' sexual activity and medical history), the discovery that has  
11 been and will be produced should be subject to the Protective Order.  
12 This includes any copies of the discovery, which include, but are not  
13 limited to, paper or electronic copies made before or after the  
14 execution of the Protective Order.

15 9. For purposes of this stipulation, the term "Defense Team"  
16 refers to defendant and his respective counsel of record. "Defense  
17 Team" refers to the counsel of record who have made appearance in  
18 this case and any co-counsel working for the Office of the Federal  
19 Public Defender in the Central District of California specifically  
20 assigned to work on this case. Additionally, the term "Defense Team"  
21 includes any defense investigators, employees, experts, and  
22 translators hired by the counsel of record for defendant to assist  
23 counsel with this case. "Defense Team" includes any subsequent  
24 counsel of record, if current counsel of record is relieved from this  
25 case or if another counsel is added to the Court's docket. "Defense  
26 Team" does not include family members and other associates of  
27 defendant.

1       10. The Defense Team is prohibited from directly providing  
2 access to any material produced in the discovery to anyone not  
3 working on the defense of this criminal case.

4       11. The Defense Team shall maintain materials designated  
5 subject to the Protective Order safely and securely, and shall  
6 exercise reasonable care in ensuring the confidentiality of those  
7 materials by (1) not making, or permitting to be made, any copies of  
8 the documents provided pursuant to and also produced before the  
9 Protective Order, (2) not permitting anyone other than Defense Team  
10 members and defendant to see documents provided pursuant to this  
11 Protective Order, (3) not divulging to anyone the contents of the  
12 documents provided pursuant to the Protective Order, and (4) not  
13 permitting the materials provided pursuant to this Protective Order  
14 to be outside of the Defense Team's offices, homes, vehicles, or  
15 personal presence. Electronic materials produced to the defense and  
16 printouts obtained from electronic materials shall be handled in the  
17 same manner.

18       12. Pursuant to its discovery obligations, the government shall  
19 identify all materials provided without redaction pursuant to the  
20 Protective Order. All materials already produced in discovery by the  
21 government shall be subject to the Protective Order. Any additional  
22 materials produced in discovery shall be made with a cover letter  
23 stating that the discovery is "SUBJECT TO PROTECTIVE ORDER" (the  
24 "Warning"). Each page of the documents, to the extent practicable,  
25 shall also bear the Warning. If the defense objects to any such  
26 designation, it may do so by application to the Court upon duly  
27 noticed motion, following meeting and conferring with the government  
28 regarding the objection.

1       13. Defendant and his attorneys are required to give a copy of  
2 this Protective Order to all individuals outside the Office of the  
3 Federal Public Defender engaged or consulted by defense counsel in  
4 this case. Those individuals must agree in writing to be bound by  
5 the terms of this Protective Order before receiving any portion of  
6 the discovery in this case. The Defense Team will keep a list of all  
7 individuals who have agreed in writing to be bound by the terms of  
8 the Protective Order, which list may be disclosed upon order of the  
9 Court in the event that the Court is asked to determine whether a  
10 possible breach of the terms of the Protective Order has occurred.

11       14. Except as designated by the government, defendant may  
12 possess and review the discovery subject to the Protective Order in  
13 this case, but defendant may not distribute, transmit, or show the  
14 discovery to any person outside the Defense Team. However, defendant  
15 may not possess any PII in the discovery belonging to another person.  
16 Defendant also may not possess, distribute, transmit, or show any  
17 photograph, audio recording, or video recording of sexual contact he  
18 had with any victim. Any copies of such materials currently in  
19 defendant's possession must be destroyed or returned to his Defense  
20 Team. Any copies of such materials that defendant or any member of  
21 the Defense Team has distributed to a person outside the Defense Team  
22 must be retrieved and destroyed, and the recipient of the materials  
23 must be notified that the materials are subject to the Protective  
24 Order in this case.

25       15. The Defense Team shall access and use the materials  
26 designated subject to the Protective Order for the sole purpose of  
27 preparing for trial or any related proceedings in this case. The  
28 Defense Team may review the materials designated subject to the

1 Protective Order with a witness or potential witness in this case.  
2 No witness or potential witness may retain the materials designated  
3 subject to the Protective Order, or any copy thereof, after his or  
4 her review of those materials with the Defense Team is complete.

5 16. To the extent that notes are made that memorialize, in  
6 whole or in part, the PII in any materials designated subject to the  
7 Protective Order, or to the extent that copies are made for  
8 authorized use by members of the Defense Team, such notes, copies, or  
9 reproductions become materials designated subject to the Protective  
10 Order and must be handled in accordance with the terms of the  
11 Protective Order.

12 17. In the event that a party needs to file materials  
13 designated subject to the Protective Order with the Court or divulge  
14 the contents of such materials in court filings, the filing should be  
15 made under seal. If the Court rejects the request to file such  
16 information under seal, the party seeking to file such information  
17 shall provide advance written notice to the other party to afford  
18 such party an opportunity to object or otherwise respond to such  
19 intention. If the other party does not object to the proposed filing,  
20 the party seeking to file such information shall redact the PII and  
21 any other private and sensitive information regarding victims and  
22 make all reasonable attempts to limit the divulging of PII and  
23 victims' private and sensitive information.

24 18. The Defense Team shall use materials designated subject to  
25 the Protective Order only for the preparation and litigation of this  
26 matter, and for no other purpose. Litigation of this matter includes  
27 any appeal filed by defendant, and any motion filed by defendant  
28 pursuant to 28 U.S.C. § 2255. Upon the final disposition of this

1 case, any materials designated subject to the Protective Order shall  
2 not be used, in any way, in any other matter, absent a court order.  
3 All materials designated subject to the Protective Order maintained  
4 in the Defense Team's files shall remain subject to the Protective  
5 Order unless and until such order is modified by court order. Within  
6 thirty days of the conclusion of appellate and post-conviction  
7 proceedings, the Defense Team shall return the materials designated  
8 subject to the Protective Order or certify that such materials have  
9 been destroyed.

10 19. In the event that there is a substitution of counsel prior  
11 to when such documents must be returned, new defense counsel must  
12 join this Protective Order before any materials designated subject to  
13 the Protective Order may be transferred from defense counsel of  
14 record to the new defense counsel, who then will become the Defense  
15 Team's custodian of materials designated subject to the Protective  
16 Order and who shall then become responsible for returning all  
17 materials designated subject to the Protective Order to the  
18 government upon the conclusion of appellate and post-conviction  
19 proceedings.

20 Dated: April 8, 2019

NICOLA T. HANNA  
Acting United States Attorney

LAWRENCE S. MIDDLETON  
Assistant United States Attorney  
Chief, Criminal Division

24 /s/  
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